

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

DANIEL WILLIAM MAY,

Plaintiff,

v.

ERIC ARNOLD, Warden, et al.,

Defendant.

Case No.: 14CV2038 BEN (JMA)

**ORDER:**

- (1) ADOPTING REPORT AND RECOMMENDATION;**
- (2) DISMISSING KAMALA HARRIS AS RESPONDENT;**
- (3) DENYING REQUEST FOR AN EVIDENTIARY HEARING; and**
- (4) DENYING PETITION FOR WRIT OF HABEAS CORPUS**

Petitioner Daniel William May, a state prisoner proceeding pro se, commenced this action with the filing of a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. (Docket No. 1). Following briefing, including a traverse filed by Petitioner, on September 25, 2015, Magistrate Judge Jan M. Adler issued a thoughtful and thorough Report and Recommendation recommending that the Petition be denied. (Docket No. 20). Objections to the Report and Recommendation were due by October 14, 2015. (*Id.*)

1 No objections have been filed. For the reasons that follow, the Report and  
2 Recommendation is **ADOPTED**.

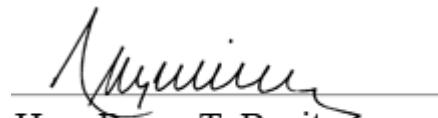
3 A district judge “may accept, reject, or modify the recommended disposition” of a  
4 magistrate judge on a dispositive matter. Fed. R. Civ. P. 72(b)(3); *see also* 28 U.S.C.  
5 § 636(b)(1). “[T]he district judge must determine de novo any part of the [report and  
6 recommendation] that has been properly objected to.” Fed. R. Civ. P. 72(b)(3).  
7 However, “[t]he statute makes it clear that the district judge must review the magistrate  
8 judge’s findings and recommendations de novo *if objection is made*, but not otherwise.”  
9 *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc); *see also*  
10 *Wang v. Masaitis*, 416 F.3d 992, 1000 n.13 (9th Cir. 2005). “Neither the Constitution nor  
11 the statute requires a district judge to review, de novo, findings and recommendations  
12 that the parties themselves accept as correct.” *Reyna-Tapia*, 328 F.3d at 1121.

13 The Court need not conduct a de novo review given the absence of objections.  
14 However, the Court has conducted a de novo review and fully **ADOPTS** the Report and  
15 Recommendation. The Petition is **DENIED** and the request for an evidentiary hearing is  
16 **DENIED**. Additionally, as the parties agree, Kamala Harris is **DISMISSED**.

17 The Court **DENIES** a certificate of appealability because the issues are not  
18 debatable among jurists of reason and there are no questions adequate to deserve  
19 encouragement. *See Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). The Clerk of Court  
20 shall enter judgment **DENYING** the Petition.

21 **IT IS SO ORDERED.**

23 Dated: November 19, 2015

24   
25 Hon. Roger T. Benitez  
26 United States District Judge